

December 19, 2001



Magalie Roman Salas
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Ex parte* presentation in: CS Docket No. 00-30

Dear Ms. Salas:

On December 18, 2001, on behalf of Media Access Project's clients Consumers Union, Consumer Federation of America, and the Center for Digital Democracy, I met with Robert Cannon, OPP, and Scott Marcus, Senior Advisor for Internet Technology. In regard to the above captioned matter, I urged that the Commission should grant the petition for review filed by Texas.net and remand the matter to the Cable Services Bureau (CSB) for a determination on the merits.

I stated that the language of the Commission's *Order* approving the merger of AOL and Time Warner clearly incorporated the FTC's consent decree and imposed an additional requirement to negotiate in good faith. Mr. Marcus asked whether the FCC merely referred to the FTC *Order* or whether the FCC genuinely imposed a new condition. I replied that the language of the *Order*, notably in Paragraphs 93-100, demonstrates the Commission's concern that the negotiations would not take place at all without a good faith requirement.

Mr. Marcus asked why the FTC, rather than the FCC, was not the appropriate forum for Texas.net's complaint. I answered that the FTC special master has only limited authority to remedy abuses, in that he may either (a) report the abuse in his annual report to the Federal Trade Commissioners or (b) disapprove all candidates until he feels that AOL Time Warner is negotiating in good faith. By contrast, the FCC can address any complaints directly. Furthermore, the possible availability of another forum does not change the FCC's responsibility to enforce the provisions of its own *Order*.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Sincerely,

Harold Feld
Associate Director

cc: Scott Marcus
Robert Cannon